

## 1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

3 HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

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5  
6 UNITED STATES OF AMERICA, )

7 )

8 PLAINTIFF, )

9 )

10 vs. )

No. CR 15-131 (A) -JFW

11 )

TEOFIL BRANK, )

12 )

13 DEFENDANT. )

14 )

15 REPORTER'S TRANSCRIPT OF

16 SENTENCING

17 TUESDAY, OCTOBER 27, 2015

18 9:03 A.M.

19 LOS ANGELES, CALIFORNIA

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23 *SANDRA MacNEIL, CSR 9013, RPR, CRR, RMR*  
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*Los Angeles, CA 90012*  
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1                   **LOS ANGELES, CALIFORNIA; TUESDAY, OCTOBER 27, 2015**

2                                   **9:03 A.M.**

3                                   - - - -

4                   THE CLERK:   Calling item No. 1, CR 15-131(A)-JFW,  
5                   United States of America versus Teofil Brank.

6                   Counsel, please state your appearances.

7                   MS. JAIMEZ:   Good morning, Your Honor.   Kimberly  
8                   Jaimez on behalf of the United States, and with me at counsel  
9                   table is Assistant U.S. Attorney Eddie Jauregui.

10                  MS. AHMAD:   Good morning, Your Honor.   Seema Ahmad and  
11                  Ashfaq Chowdhury on behalf of Mr. Brank, who is present in  
12                  custody.

13                  THE COURT:   All right.   Good morning to all.

14                  This matter was originally scheduled for imposition of  
15                  sentence yesterday, October 26, 2015.   However, the government  
16                  raised the issue that there were concerns that the Court lacked  
17                  jurisdiction to proceed with the sentencing of Mr. Brank due to  
18                  the pendency of the appeal that the government had filed from  
19                  the Court's dismissal of one of the counts of the first  
20                  superseding indictment.   The government had indicated that it  
21                  had made a motion to dismiss the appeal, and that dismissal had  
22                  not been acted on by the Ninth Circuit yesterday at the time  
23                  that we were prepared to proceed with sentencing.

24                  I have now been provided with a copy of the order of the  
25                  Ninth Circuit that was filed on October 26th, 2015, and that

1 order indicates that the appellant's motion for voluntary  
2 dismissal of the appeal is granted and the appeal is dismissed.  
3 The order further states that the Ninth Circuit's order shall  
4 be served on the district court and shall act as the mandate of  
5 the Ninth Circuit Court of Appeals. So based upon that order,  
6 it is my view that the matter is ready to proceed to sentencing  
7 today.

8 So may I ask counsel, is there any reason why judgment and  
9 sentence should not be imposed at this time?

10 MS. AHMAD: No, Your Honor.

11 MS. JAIMEZ: No, Your Honor.

12 THE COURT: All right. If counsel will approach the  
13 lecturn with Mr. Brank, I will then proceed.

14 Has counsel and the defendant read and discussed the  
15 presentence report, the revised presentence reports and the  
16 various addenda that had been filed by the probation  
17 department?

18 MS. AHMAD: Yes, Your Honor.

19 THE COURT: All right. Although the United States  
20 guidelines are now advisory, the Court must still consider the  
21 advisory guideline range in addition to the other directives  
22 set forth in Section 3553(a) and impose a sentence that is  
23 sufficient but not greater than necessary to comply with the  
24 purposes of the Act.

25 As counsel knows, this Court follows a two-step or a

1 two-phase sentencing process. In phase one, I will determine  
2 or calculate the applicable advisory guideline range, which  
3 will require the Court to resolve any objections to the  
4 presentence guideline calculations as well as and any factual  
5 disputes. Thereafter, I will determine whether, pursuant to  
6 the Sentencing Commission policy statements, any departures  
7 from the advisory guidelines apply.

8 In this case, in July of 2015, the defendant was convicted  
9 after a jury trial on Counts 1, 2, 3, 4, 5 and 6 of the first  
10 superseding indictment.

11 The probation officer filed the original presentence  
12 report on August 14th. It appears as document number 310  
13 together with the probation officer's recommendation letter.  
14 The probation officer subsequently filed various addenda and  
15 revised presentence reports that appear as docket numbers 320  
16 and 334. The revisions made by the probation officer in the  
17 various revised presentence reports did not affect the original  
18 guideline calculation.

19 As to the guideline calculation, the probation officer has  
20 made the following advisory guideline calculations. In the  
21 presentence report, the base level has been calculated at level  
22 nine. To that, the probation officer has added a 14-level  
23 enhancement set forth in paragraph 30 in connection with the  
24 amount of the loss. To that, the probation officer has also  
25 added a two-level enhancement or two-level increase for the

1 multiple counts, which is set forth in the probation  
2 presentence report. The combined adjusted offense level is  
3 calculated at level 25. The probation officer has also  
4 calculated defendant's criminal history category at III. The  
5 resulting advisory guideline range is 70 to 87 months.

6 The defendant filed his sentencing position paper and  
7 raised one phase one issue, and that issue related to the  
8 objection to the probation officer's assertion that the  
9 defendant is a citizen of another country. The government  
10 argued in its recent filing that the immigration status of the  
11 defendant is not before the Court. I agree; however, it does  
12 appear that it is important with respect to any placement by  
13 the Bureau of Prisons of the defendant. So the probation  
14 officer I think has correctly revised the presentence report to  
15 indicate on page 3 that the citizenship -- United States  
16 citizenship verification pending, as well as immigration  
17 status, naturalized citizen verification pending. So I think  
18 that should have addressed the defendant's concerns with  
19 respect to the presentence report.

20 MS. AHMAD: Yes, Your Honor.

21 THE COURT: All right. I don't see any other phase  
22 one issues raised by the defense, but if I've missed any,  
23 please let me know.

24 MS. AHMAD: No, Your Honor.

25 THE COURT: The government has also filed its

1 sentencing position paper. That was filed on -- the initial  
2 one was filed on October 9th and it appears as document number  
3 326. I have reviewed that position paper, and it doesn't  
4 appear that the government has raised any phase one issues, but  
5 I want to confirm with counsel that that's correct.

6 MS. JAIMEZ: That's correct, Your Honor.

7 THE COURT: All right. If there are no other phase  
8 one issues or there are no phase one issues, then I will  
9 conclude phase one and calculate the advisory guideline  
10 consistent with the probation officer's calculations, and that  
11 is a total offense level of 25, defendant's criminal history  
12 category a category III, and the resulting advisory guideline  
13 range of 70 to 87 months.

14 After calculating the advisory guideline range, in phase  
15 two I must consider the Congressional goals of sentencing as  
16 set forth in the Sentencing Reform Act and impose a sentence  
17 that is sufficient but not greater than necessary to reflect  
18 the principles stated in 3553(a) and accomplish the goals or  
19 needs of sentencing as set forth in Section 3553(a)(2).

20 I've read all of the materials that have been submitted by  
21 counsel, but certainly I will hear argument from counsel. But  
22 before I do that, there is one additional housekeeping matter  
23 that, in light of the government's position that I didn't have  
24 jurisdiction, I withheld, and that is the unopposed ex parte  
25 application for an order to transfer Mr. Brank to a conference

1 room, and that application is unopposed, and so I'm going to  
2 sign that application, and I'll ask the courtroom deputy to  
3 file that order today.

4 So I will hear from defense counsel.

5 Let me ask the government first, however, does the victim  
6 in this case wish to be heard?

7 MS. JAIMEZ: Your Honor, my understanding is that the  
8 victim's counsel wishes to be heard on behalf of the victim.

9 THE COURT: All right. Then let me hear from the  
10 victim's counsel first before I hear from the defendant.

11 MR. AXEL: Yes, Your Honor. Thank you. Very briefly.

12 The victim is present in court. He did testify  
13 extensively, obviously, during the trial about the crimes and  
14 the impact they've had. Obviously, it's been very difficult  
15 for him. He did want to be here, and he is here, to show  
16 respect for the process and, obviously, as an interested  
17 observer. At the same time, given the emotional toll involved,  
18 he's asked me to just say a few words on his behalf.

19 First, he asked me to thank the Court for the time  
20 afforded to this case and for the consideration given to all  
21 aspects of it. Of course, the statute requires that victims be  
22 treated with fairness and respect, and he -- I know he feels  
23 that he has been treated with fairness and with respect in this  
24 courtroom, is grateful for that.

25 Second, he did testify to the impact that the crimes had



1 on him, and I think equally significantly, we just wanted to  
2 highlight for the Court the defendant's post-offense conduct.

3 As described in the government's papers, the defendant did  
4 continue to harm the victim even after the defendant was  
5 arrested. First, as the Court is aware from the record, he  
6 tried to persuade the victim to drop the charges, and then when  
7 that failed, he falsely accused the victim of various things to  
8 try to intimidate him and punish him, in our view, for having  
9 come forward and turned the case over to the authorities.  
10 Given the pattern of conduct, both the criminal history of the  
11 offense and post-offense conduct, it's our view that he was and  
12 remains a danger to the community.

13 Finally, Your Honor, although the victim knew the adverse  
14 impact of coming forward to law enforcement was likely to have  
15 on his own life, he did do the right thing by coming forward  
16 and turning the case over to the authorities.

17 THE COURT: Well, he really had no choice. Based upon  
18 what had gone on, it would appear to me that -- of course, you  
19 know, I certainly am sympathetic to the victim in this case;  
20 however, these events were of his own creation. He created  
21 this dilemma that he found himself in, and unfortunately for  
22 him, given Mr. Brank's conduct in terms of his continuing  
23 efforts to extort money from the victim, he really had no  
24 choice but to go to law enforcement, otherwise he would be  
25 plagued with Mr. Brank and his efforts to continue to extort

1 money for, who knows, for the rest of his life.

2 MR. AXEL: Yeah. It's a good thing -- I will say he  
3 did come forward before the successive attempts. That  
4 happened -- but absolutely, look, I think he felt that he had  
5 no choice, and he did it, and I think it was the right thing.

6 The offense conduct, obviously, is technologically easy  
7 for someone like the defendant to commit, and in our view is  
8 highly destructive to victims.

9 So we would ask that the Court impose a guideline sentence  
10 in order to promote respect for the law, to send an appropriate  
11 message of deterrence, to provide just punishment, and to  
12 protect the victim and the public.

13 Thank you, Your Honor.

14 THE COURT: All right.

15 MS. AHMAD: Thank you, Your Honor.

16 The Court clearly has a full understanding of the offense  
17 conduct in this case. It's been briefed thoroughly, and  
18 obviously, we sat for trial in this case, and I think a  
19 question of the facts and what happened and what Mr. Brank did  
20 is not really in question. I would submit to the Court, Your  
21 Honor, that I do not believe that this case is a guidelines  
22 case, for several reasons.

23 One, as we know, the guidelines are primarily driven by  
24 the loss amount, the plus-14 enhancement in this case, and I  
25 don't think that that's a good proxy for what I understand is

1 the harm that has been suffered by the victim in this case.

2 Moreover, Your Honor, I just would like to talk very  
3 briefly about Mr. Brank and how he came to this position in his  
4 life. It's a little bit difficult because, clearly, it's  
5 always hard for a defense attorney to see a client brought for  
6 sentencing, especially after a very contested trial. But  
7 Mr. Chowdhury and I have spent quite a bit of time with  
8 Mr. Brank, and what has come out, Your Honor, is what I view as  
9 a painful and tragic past.

10 I think as the Court knows from the PSR and from our  
11 papers, this case has allowed Mr. Brank to really look into his  
12 childhood and see how that has shaped him. And I say this  
13 coming from a perspective of not always having the smoothest  
14 relationship with Mr. Brank and it coming out in various  
15 conversations that his father was very, very, very physically  
16 abusive: chaining him, sometimes to his bed, giving him a  
17 bucket to urinate in; beating him; beating his brothers and  
18 sisters. His mom was violent, throwing knives at the kids,  
19 verbally abusive, and she tried to commit suicide, and  
20 Mr. Brank was one of the children that saw her in the garage,  
21 hanging, before his father cut her down. More recently I found  
22 out that when the family didn't have enough food for the 10  
23 kids, she would feed them sleeping pills just to pacify them.

24 It's not meant to excuse Mr. Brank's behavior, and I again  
25 want to acknowledge that notwithstanding my issues with

1 Mr. Burns and the wealth and the power and his own actions that  
2 play in this case, I do understand that this must have been  
3 incredibly scary and traumatic for him. I just ask the Court  
4 to consider who Mr. Brank is and how he got to this point in  
5 his life and to think about whether a heavy term of custody  
6 really does promote the ends of justice in this case. I don't  
7 think that a term of four, five, six years is required for  
8 either specific or general deterrence in this case, Your Honor.

9 This was a highly specific relationship that Mr. Brank had  
10 with the victim for two years, much of which we don't really  
11 have a full understanding of. It's not a sort of easily  
12 repeatable, I think, offense in terms of general deterrence,  
13 and I don't think a term of custody is going to rehabilitate  
14 him and help him deal with the issues that got him to this  
15 place.

16 I have seen, in my conversations with him, this desire to  
17 have a productive, quality life, and I think he knows that he's  
18 going to have to do the therapeutic and the psychological work  
19 to get there. I know his girlfriend, Ms. Buholtz, who's here,  
20 who's been at every court appearance, desperately wants him to  
21 get the mental health treatment that he needs.

22 And with that, Your Honor, I understand that a year and a  
23 day may seem excessively lenient. I would ask the Court to  
24 think about imposing a term of 24 months, with a recommendation  
25 to RDAP for Mr. Brank to address some of the substance abuse

1 issues that got him to this place.

2 Thank you, Your Honor.

3 THE COURT: One of the problems I have with this case  
4 is that Mr. Brank has apparently either decided at the outset,  
5 or as the case developed, not to accept any form of  
6 responsibility for his criminal conduct. As his friend,  
7 Mr. Hattig, points out in his letter, I, on several occasions  
8 during the course of these proceedings -- and you're correct,  
9 it was a hotly contested matter. And I certainly disagree with  
10 Mr. Hattig's observations that is somehow critical or critical  
11 of your, defense counsel's, performance, because you served  
12 Mr. Brank not only well in this case, but above and beyond  
13 well. The representation that you provided him was excellent,  
14 beginning with the motion to suppress the gun, and through and  
15 including the motion to dismiss the 924(c) count. Of course,  
16 you had a little help from the U.S. Supreme Court. But I can't  
17 remember, and I certainly don't have the ability to go -- I do  
18 have the ability, but it's really not that important, how many  
19 times that I tried to communicate to Mr. Brank in open court in  
20 my comments. I think at one point in time we talked about the  
21 claim of right defense, and I opined -- in "opine," I suggested  
22 that maybe it was viable with respect to the \$500,000, but it  
23 certainly wasn't in terms of the million dollars.

24 Notwithstanding all of that, Mr. Brank, through not only  
25 I'm sure the advice that you gave him in terms of the

1 overwhelming nature of the evidence in this case, but more  
2 importantly, as indicated in Mr. Hattig's letter, he chose not  
3 to accept responsibility and go forward. And the question that  
4 I have in my mind -- and certainly he had the right to go to  
5 trial. He has the absolute right to have the government prove  
6 his guilt beyond a reasonable doubt. I suspect deep down that  
7 this going to trial was a continuation of his efforts to harm  
8 the victim in this case, because he recognized that the victim  
9 would have to come up, get on the stand, and he would have to  
10 admit to some very, basically, criminal conduct, and that  
11 obviously could have been avoided if Mr. Brank had chose to  
12 dispose of the case.

13 I just don't see at any point in time during the course of  
14 these proceedings, including up to today, that Mr. Brank has  
15 accepted responsibility for what he has done. It's just a  
16 cold, calculated effort to not only extort money but also to  
17 harm the reputation of the victim in this case.

18 And I'm going to inquire of the government as to the  
19 status of any investigation with respect to the victim in this  
20 case, because certainly there was an admission of criminal  
21 conduct on the witness stand.

22 So that's my fundamental problem with fashioning a  
23 sentence in this case. I just can't simply get over the hurdle  
24 of Mr. Brank's conduct not only in connection with the offense  
25 conduct, but even after he was arrested, as the government

1 points out in its sentencing position papers, to continue to  
2 try to harm the client in various communications with the -- I  
3 call it loosely "the press." And also the fashioning of the  
4 defense. We went through a series of in camera filings where I  
5 required an offer of proof as to what the defense was going to  
6 be, and ultimately that defense was not put on, but he  
7 communicated that defense to, apparently, the press, and it's  
8 just a continuing effort, evil, evil effort on Mr. Brank's part  
9 to harm the victim in this case. I understand that, you know,  
10 relationships come to an end, but at some point in time you  
11 have to get on with life. And that's the problem I have with  
12 Mr. Brank.

13 So you can address that, or if Mr. Brank chooses to  
14 address that, I certainly want to hear from Mr. Brank.

15 MS. AHMAD: I'm sure Mr. Brank will address that, Your  
16 Honor. I'll just briefly address it as well.

17 I can just say categorically that the decision to go to  
18 trial did not have to do with harming the victim. I can see  
19 why it would appear that way from not having been in the  
20 conversations that Mr. Chowdhury and I had with Mr. Brank, but  
21 that was not at all part of the calculus.

22 My intention in going into Mr. Brank's background and  
23 history is to demonstrate to the Court that he's -- he's a  
24 young man with severely impaired judgment that I think is  
25 really the result of unimaginable trauma. I mean, you could

1     imagine. He's been sexually abused, physically abused,  
2     verbally abused. And I know the Court sees defendants come in  
3     here all the time with that kind of history. What I can say  
4     is -- and Mr. Chowdhury and I again, we have this understanding  
5     of how that has deeply and severely affected him. I mean, this  
6     is a young man who at the age of 20 decided to go into an  
7     industry to perform sex acts for pay, and then decided to  
8     prostitute himself to Mr. Burns. He's not someone who has made  
9     productive, thoughtful decisions about his life, and I think  
10    that in part he bears responsibility for that, and I think this  
11    case is helping him turn a corner in understanding that, and in  
12    part I think that that is the result of a young man who was  
13    repeatedly, repeatedly abused.

14           I understand from the papers and from the look of the  
15    case, he appears to be greedy and evil, and I'm asking the  
16    Court to consider that he has made mistakes and he has done  
17    harm in this case, but I don't think that that's the summary of  
18    who he is. I think that he is in part born out of the trauma  
19    that he has suffered, and I think he has the desire and the  
20    ability now, the early stages of the ability, to self-recognize  
21    and to try to work on that.

22           THE COURT: All right. Does your client wish to be  
23    heard?

24           MS. AHMAD: Yes, Your Honor.

25           THE DEFENDANT: Before trial, you know, I was full of



1 pride. You know, I -- I thought I can get away with whatever I  
2 wanted to do. And I was wrong. I messed up.

3 I want to apologize to Mr. Burns. I betrayed our  
4 friendship and loyalty, and I've done the unthinkable, and I  
5 regret it.

6 Losing -- losing trial is a reality check and major  
7 wake-up call. It completely broke me. And I want to change.  
8 I've -- I've come to acceptance of this, and I have to take  
9 responsibility for it. I do regret my actions, and I don't  
10 give any excuses for it. I did what I did.

11 I want to better myself. I need help. I am afraid.  
12 Seventy, 80 months, it scares me a lot. I have learned my  
13 lesson, and I want to start building myself back up, living an  
14 honest life, doing good. I want to get a college education. I  
15 want to start a family. And I'm afraid of the time that I'm  
16 going to be facing. I'm going to lose my partner, my  
17 girlfriend, because, you know, and she's -- she's been there  
18 for me, and she's helping me. I owe it to myself and to her to  
19 change my ways, and I really do want to change, and I'm asking  
20 for a second chance, for mercy.

21 This is the scariest -- it's hard to take in, but my  
22 actions have consequences, and through pain and suffering we  
23 learn, and I just want you to know that I do regret it, and --  
24 and I was just full of pride.

25 THE COURT: I don't understand. What do you mean by

1 you were full of pride?

2 THE DEFENDANT: My ego. I -- my nose was too high in  
3 the sky. I don't know how else to put it. I thought I was  
4 better, I deserved better, I deserved whatever I thought I can  
5 do, and I was wrong.

6 THE COURT: But after you got caught, I mean, that  
7 whole concept goes out the window. Now you're faced with a  
8 criminal prosecution. You're faced -- I assume that you  
9 understood what I was trying to communicate to you through  
10 statements during the course of the trial in terms of the  
11 outcome. I don't think there was any doubt, based upon the  
12 overwhelming evidence, that you were going to be convicted, yet  
13 you didn't accept responsibility, and there is a time when, you  
14 know, your pride is over. You're now caught. You're now  
15 facing the prospects of a criminal prosecution and how best to  
16 resolve that criminal prosecution, and to wait until after a  
17 conviction to stand before me and say that you accept  
18 responsibility really comes a little too late.

19 THE DEFENDANT: I understand that.

20 THE COURT: I see defendants come in every Monday who  
21 stand before me for sentencing and are sorry for what they've  
22 done, and obviously I have to make a determination as to  
23 whether or not that's a credible statement, and I make that  
24 determination based upon the conduct of what went on during the  
25 course of the case. And in your situation, not only did you

1 not stop trying to hurt Mr. Burns after you were arrested, you  
2 continued while you were in custody.

3 THE DEFENDANT: I'm -- was very stubborn. I don't  
4 know how to explain that. It was just, in my head, just things  
5 were different, and it wasn't till losing trial that really hit  
6 me.

7 THE COURT: Well, obviously it was going to hit you  
8 then, when the jury comes back with a guilty verdict.

9 THE DEFENDANT: It did.

10 THE COURT: And there was no doubt in most reasonable  
11 individual person's mind that that's what was going to happen  
12 based upon the evidence.

13 THE DEFENDANT: I don't know what was going on up in  
14 my head. All I know is that I needed this wake-up call.

15 THE COURT: Well, you certainly got it.

16 THE DEFENDANT: Yeah. And I just, I hope you can help  
17 me, work with me, allow me to show you my potential. I'm  
18 afraid to spend the rest of my 20s, and more, in prison. It's  
19 not the life I want. I can do so much better, and I want to  
20 show you. Just work with me, please, if you can.

21 THE COURT: I'm looking at the presentence report,  
22 specifically the education and employment. Based upon the  
23 presentence report, you graduated from high school in 2007.  
24 Then what did you do thereafter in terms of employment? The  
25 probation officer, in paragraph 87, commences with your

1 employment as an actor in the gay pornography print and film  
2 business.

3 THE DEFENDANT: Well, I just got into construction. I  
4 couldn't afford college, and, you know, my self-worth was  
5 destroyed, and I didn't think I could do better. I didn't have  
6 someone there to guide me, to push me toward the right path,  
7 and it just cumulated into bad choices, and...

8 THE COURT: So I see from January of 2008 to January  
9 2013 you worked as a residential painter.

10 THE DEFENDANT: Yes.

11 THE COURT: All right. Is there anything else you  
12 want to add?

13 THE DEFENDANT: I want to apologize to the courts for  
14 this time, for this whole process, apologize to the government  
15 for continuing it and taking it to trial. I shouldn't have  
16 done that, and I do regret it. I'm very stubborn, and --  
17 and -- and I am sorry. I guess that's it. I apologize. I'm  
18 sorry.

19 THE COURT: Anything else?

20 THE DEFENDANT: Help me, God. I don't know.

21 MS. AHMAD: Nothing further, Your Honor.

22 THE COURT: All right. Does the government have  
23 anything it wishes to add to its papers?

24 MS. JAIMEZ: Yes, Your Honor.

25 Your Honor, the government is recommending a sentence in

1 the middle of the guideline range, 80 months. The government  
2 is not recommending high end. The government did not seek an  
3 upward departure to account for the defendant's actions in  
4 connection with obtaining a gun and bringing a gun in his  
5 getaway car, even though those actions are not reflected in the  
6 guideline range. The Court went over the offense conduct, Your  
7 Honor. The base offense level and the specific offense  
8 characteristics don't account for the gun. Notwithstanding,  
9 Your Honor, the government has conformed with the  
10 recommendation, within the guidelines, simply in the middle of  
11 the range.

12 Defense, on the other hand, Your Honor, is now requesting  
13 24 months, which is equivalent to essentially a 12-level  
14 variance, Your Honor, on the basis of a characteristic, Your  
15 Honor, common to most defendants that appear before this Court.  
16 Many defendants, unfortunately, sadly, have faced trauma in  
17 their past, have faced difficult childhoods, and accept  
18 responsibility late. However, Your Honor, those facts alone do  
19 not merit the type of substantial variance that this defense is  
20 asking for. Rather, a mid-range sentence of 80 months is  
21 sufficient but not greater than necessary to meet the  
22 sentencing goals articulated in 3553(a).

23 Your Honor, this was a serious offense. This offense  
24 involved both completed extortion as well as attempted  
25 extortion. The defendant was able to obtain a \$500,000 wire

1 transfer as well as an Audi, and while the victim is expected  
2 to receive back most of those funds, over \$50,000 have been  
3 lost.

4 In addition to the loss financially, defense is correct  
5 that the financial loss is not a sufficient proxy for the harm  
6 in this case. It is one aspect, but it is not the entire  
7 aspect. As the Court has already acknowledged and saw in  
8 trial, the victim has suffered substantial psychological harm  
9 as a result of these proceedings and as a result of the  
10 defendant's conduct, both --

11 THE COURT: Is there an investigation pending over the  
12 conduct of the victim?

13 MS. JAIMEZ: Your Honor, the government has no  
14 information about a pending investigation at this time.

15 THE COURT: Well, is the government undertaking any  
16 such investigation?

17 MS. JAIMEZ: Your Honor, I have no information about  
18 any investigation at this time.

19 THE COURT: What do you mean you don't have any  
20 information? You're the government. You're representing the  
21 government.

22 MS. JAIMEZ: Yes, Your Honor. However, the government  
23 does not have any information with respect to any open or  
24 potential pending investigations with respect to the victim.  
25 And even if there were any, Your Honor --

1 THE COURT: So that means there is none.

2 MS. JAIMEZ: Your Honor, I am not apprised of any,  
3 Your Honor.

4 THE COURT: Well, if you're not, who would be?

5 MS. JAIMEZ: At this time, Your Honor, even if there  
6 were a pending investigation, it would not be something that  
7 would be appropriate for discussion in open court at this time.

8 THE COURT: Well, you may not think so.  
9 Go ahead.

10 MS. JAIMEZ: In addition to the loss and the financial  
11 harm, Your Honor, the Court's also directed to look at the  
12 history and characteristics of this defendant. This is not a  
13 first-time offender, Your Honor. This is not a defendant with  
14 one criminal history point. This is a history --

15 THE COURT: Yeah, but I think his criminal history is  
16 overstated.

17 MS. JAIMEZ: Well, it does include at least one  
18 conviction of violence, of spousal battery, in which he  
19 received four months' imprisonment, which is not common for a  
20 domestic violence-related charge. Four months' imprisonment  
21 followed by three years of probation.

22 But what's more, Your Honor, the defense has posed in its  
23 papers that the reason for the criminal history and the  
24 admitted substance abuse can be tracked back to the defendant's  
25 difficult childhood, and yet again I would emphasize for the

1 Court that, unfortunately, that is the case with many  
2 defendants that appear in these courts, and it is not a  
3 sufficient basis for the type of variance being requested.

4 Your Honor, the 3553(a) factors also ask that the Court or  
5 direct the Court to consider general deterrence. This was an  
6 easy crime, Your Honor, a technologically easy crime that has  
7 made it to the media. People are looking at this case, and if  
8 this defendant receives a lenient sentence, notwithstanding the  
9 fact that he is a category III defendant, receives a lenient  
10 sentence, it sends the message, Your Honor, that the upside for  
11 such conduct outweighs any potential prison sentence.

12 By sentencing this defendant, Your Honor, within the  
13 guideline range, a midpoint in the guideline range, the Court  
14 assists in supporting general deterrence for anyone else who  
15 might look at this case as an example, an easy way to make  
16 money, especially if one is able to quickly hide the funds.  
17 And if the sentence is simply 24 months, well, the upside might  
18 outweigh the downside.

19 THE COURT: So you think somebody's going to sit down  
20 and say, "Gee, the Court imposed 24 months on Mr. Brank, so now  
21 that I'm going to participate in this social media extortion,  
22 I'm going to weigh the risk and the benefits based upon a  
23 24-month sentence"?

24 MS. JAIMEZ: That's one possibility, Your Honor.

25 THE COURT: It's a possibility, but it's totally



1 unrealistic. But nonetheless, you have anything else you want  
2 to add?

3 MS. JAIMEZ: Yes, Your Honor.

4 THE COURT: All right. Well, be brief. Because I've  
5 read your papers, and right now you're just simply repeating  
6 what's in your papers.

7 MS. JAIMEZ: The guidelines, the guideline sentence,  
8 Your Honor, would also ensure that the Court avoids any  
9 unnecessary sentencing disparities. The guidelines are  
10 provided to the Court to ensure sentencing consistency for  
11 these types of offenses.

12 Now, admittedly, there weren't many offenses of this type  
13 now that the Court can refer to. However, I will note for the  
14 Court at least two cases that have been cited substantially by  
15 the parties in pretrial litigation. I'll turn the Court's  
16 attention to Ninth Circuit *Pascucci* as well as Second Circuit  
17 *Jackson*.

18 *Pascucci* involved attempted extortion. Not completed  
19 extortion, Your Honor. Attempted extortion of only \$5,000.  
20 The defendant in that case did not bring a firearm to the  
21 meeting where he attempted to recover the proceeds, and the  
22 defendant in the *Pascucci* case did not continue attacking the  
23 victim, based on the record we have. In that case, the Court  
24 sentenced the defendant to 36 months, beyond what the defense  
25 here is asking.

1           *Jackson*, Your Honor, also involved attempted extortion,  
2 not completed extortion as we have here. No financial loss as  
3 we have here. No evidence of a gun as we have here. And the  
4 main protagonist in that case received 63 months.

5           Your Honor, in this case, there was substantial extortion  
6 that spanned weeks. Substantial harm to the victim. There's a  
7 need to send a message of general deterrence and to promote  
8 respect for the law, and the government would recommend a  
9 within-guideline sentence of 80 months.

10           Thank you, Your Honor.

11           THE COURT: What about Mr. Yim? He got probation. If  
12 you're talking about sentencing disparity, don't we have to  
13 focus on Mr. Yim, who was actually the individual who was  
14 responsible for obtaining the weapon, and he was the individual  
15 who was in the car with the weapon, and at least Mr. Brank  
16 expected him to use the weapon in the case of trouble? I  
17 believe, my memory serves me, Mr. Yim was not on board with  
18 that concept, but how do you justify the within-guideline  
19 sentence and Mr. Yim receiving a probationary sentence, to  
20 which he immediately went out and violated the terms of his  
21 supervised release?

22           MS. JAIMEZ: Your Honor, Mr. Yim was not involved in  
23 the extortion, and most importantly --

24           THE COURT: He wasn't involved in the extortion? Then  
25 what was he doing in the Starbucks parking lot with a gun on

1 the day in question when Mr. Brank was there to pick up the  
2 million dollars?

3 MS. JAIMEZ: He wasn't -- correction, Your Honor. He  
4 was not involved with the initial planning of the extortion, as  
5 Brank was. And most importantly, Your Honor, the defendant Yim  
6 who you're referring to only obtained the gun at Mr. Brank's  
7 request. It was the defendant who reached out to Mr. Yim to  
8 find a gun. It was the defendant who traveled to Mr. Yim's  
9 acquaintance's house to obtain the gun and then traveled to  
10 Los Angeles, separated it from the firing range equipment, put  
11 it in his backpack, with ammunition, and made sure that it was  
12 in the getaway car and told Mr. Yim to use it if necessary.

13 THE COURT: All right. You want a chance to --

14 MS. AHMAD: No, Your Honor. Nothing further.

15 THE COURT: All right. Is there any legal reason why  
16 sentence should not be imposed?

17 MS. AHMAD: No, Your Honor.

18 THE COURT: All right. In fashioning the sentence to  
19 be imposed in this case, I've made an individualized assessment  
20 based upon the facts and arguments presented by the parties,  
21 and I've considered and applied all of the 3553(a) factors.  
22 However, I wish -- I think it's important to discuss several of  
23 those factors.

24 The first factor is the nature and circumstances of the  
25 offense. In my view, this is a very serious offense and

1 requires a substantial prison sentence. Because the Court has  
2 presided over numerous pretrial motions and hearings and the  
3 actual trial of this case, I'm fully aware of the nature and  
4 circumstances. However, in summary:

5 The victim in this case met the defendant through a  
6 pay-for-sex encounter in 2013. As established at trial, the  
7 victim is a wealthy executive who traveled in influential  
8 circles and had an interest in younger, attractive men who  
9 worked in the gay pornography industry. After their initial  
10 encounter, the victim began paying the defendant to refer other  
11 actors in the pornography industry, and escorts, to him for  
12 paid sexual encounters. The victim continued to pay the  
13 defendant for his sexual encounters with the defendant. The  
14 victim paid the defendant for sex approximately four times, and  
15 for referrals about the same number of times. In each  
16 instance, the defendant received approximately \$1,500 to  
17 \$2,000.

18 The pay-for-sex arrangement between the victim and the  
19 defendant began to deteriorate in early 2015 when the defendant  
20 refused to return a referral fee for a sexual encounter that  
21 never happened. The defendant became upset and angry when the  
22 victim told the defendant that he did not think or believe that  
23 they could continue to have a working relationship.  
24 Thereafter, the defendant proceeded to send the victim a series  
25 of threatening text messages warning the victim that he was,

1 quote, feeling evil, end of quote, and he could bring the  
2 victim's house down. Specifically, the defendant warned the  
3 victim that he had a Twitter account and that -- and I'm  
4 quoting -- lies can be made, closed quote, and truths told  
5 through that medium.

6 The defendant's text messages and his, in my view,  
7 outrageous conduct in this case, clearly evidence the  
8 defendant's evil and criminal intent. The text messages are  
9 quoted at length at pages 3 and 4 of the government's  
10 sentencing memorandum and will not be repeated here.

11 What's always been, in my view, the most damning evidence  
12 of the defendant's incredible and outrageous greed is the fact  
13 that after successfully extorting the victim out of \$500,000  
14 and an automobile worth \$180,000, he didn't simply enjoy the  
15 car and the money, which was significantly more than the  
16 defendant had ever earned in his lifetime. Instead, he  
17 embarked upon a plan or a scheme to extort an additional  
18 million dollars from the victim in March of 2015. As that  
19 scheme to extort an additional one million dollars unfolded,  
20 he enlisted the assistance of his friend, Mr. Yim, who I've  
21 discussed with government counsel, who obtained a .357 Colt  
22 revolver that they brought with them to the Starbucks on  
23 March 4, 2015, where the delivery or the exchange of the  
24 one-million-dollar payment was to take place.

25 Prior to the exchange, the defendant told the victim over

1 the phone that he was not coming alone, that if anything else  
2 should happen, he had what he needed for anything else.  
3 Moreover, the defendant's friend and companion that evening,  
4 Mr. Yim, testified at trial that defendant told him to use the  
5 weapon if anyone started shooting at the defendant. The  
6 defendant was adamant and continuing his efforts to extort an  
7 additional one million dollars, and if anything should go  
8 wrong, if the feds should show up, for example, based upon the  
9 evidence at trial, the defendant was prepared to use force.

10 The defendant seeks to downplay the existence of the gun  
11 and correctly notes that it was Yim who provided gun, that it  
12 was not loaded and not on the defendant's person but in the  
13 car. However, it was defendant's idea to obtain the gun and  
14 bring the gun to the Starbucks, and in statements as to what  
15 Yim was expected or supposed to do if defendant was shot at,  
16 clearly suggest that he expected Mr. Yim to use the gun if  
17 trouble occurred.

18 What's even more troubling, is even after the defendant  
19 was arrested, he continued his efforts to hurt or harm the  
20 victim in this case. As the government points out and is seen  
21 from Exhibits 3 and 4, the defendant tried and ultimately did  
22 release a statement to the media where he portrayed himself as  
23 an innocent victim and accused the victim of criminal acts.  
24 Defendant suggested that the victim had raped him and was a  
25 sexual predator. As the Court recalls from the various

1 hearings in this case, he also falsely accused the victim of  
2 sexual contact with minors, which the government undertook an  
3 investigation and ultimately concluded that those claims were  
4 false.

5 At the same time that the defendant was continuing his  
6 efforts to hurt the victim, the defendant was attempting to  
7 communicate, in my view, a phony apology to the victim, hoping  
8 that the victim would drop the charges against him.

9 As to the history and characteristics of the defendant, I  
10 agree with counsel's arguments that this is a case that is  
11 above most of the cases that the Court sees in terms of the  
12 abuse that the defendant suffered during his childhood. As the  
13 defendant's sentencing memo points out and the presentence  
14 report notes, Mr. Brank is the seventh of ten children born to  
15 his immigrant parents, who moved to the United States when  
16 Mr. Brank was very young. Mr. Brank's parents inflicted  
17 unimaginable pain on him. Mr. Brank's father would grab him by  
18 the throat, slam him against walls and tables. The defendant  
19 was whipped with a vacuum cord and beaten with wooden spoons  
20 and belts. Defendant's father chained him to his bed, chained  
21 him to a post outside, telling the defendant that now he knows  
22 how animals feel.

23 The abuse suffered by Mr. Brank came from his mother as  
24 well. She had a violent temper, and on one occasion, as  
25 counsel points out, threw knives at two of her children. And

1 it was the defendant who witnessed his mother's hanging by her  
2 neck in the family garage in an attempted suicide.

3 The defendant clearly lacked parental affection and  
4 supervision as a child. As described in the presentence  
5 report, the defendant and his siblings would escape their  
6 abusive home by wandering around the neighborhood and playing  
7 at friends' homes.

8 When Mr. Brank was very young, he was also molested by a  
9 neighbor. And the description of the conduct, the criminal  
10 conduct by that neighbor as against Mr. Brank, is described in  
11 the revised presentence report, and I'm not going to go into  
12 that now, out of respect for Mr. Brank's privacy.

13 The defendant's siblings have declined to provide  
14 sentencing letters that discuss family abuse, out of fear of  
15 revealing information of a criminal nature about their parents.  
16 However, a letter has been submitted by one of Mr. Brank's  
17 sisters, as well as several friends, and those letters have  
18 been helpful to the Court in trying to understand the  
19 defendant. In addition, defense counsel has spoken with  
20 several of Mr. Brank's siblings and confirmed the abuse by his  
21 parents that has been extensively described in the presentence  
22 report and the defendant's sentencing memorandum. The defense  
23 counsel has also confirmed that one of defendant's brothers  
24 also suffered sexual abuse by one of the neighbors that abused  
25 Mr. Brank.



1           The defendant does have a criminal record; however, I  
2       conclude that the criminal history category of III is somewhat  
3       overstated, because the record primarily consists of  
4       traffic-related offenses. However, what is troublesome about  
5       his record is that he has a history of physically abusing his  
6       spouse. Although the presentence report indicates he was only  
7       18 or 19 years old at the time of these incidents, he does have  
8       a history of hitting women, which, in my view, such conduct is  
9       inexcusable.

10          The defendant has substance abuse issues that are detailed  
11       in the presentence report and the defendant's sentencing  
12       position paper and suggest that those issues contributed to his  
13       poor decisions, making his attempts or efforts to extort  
14       millions of dollars from the victim. Although I accept his  
15       argument, I'm convinced that defendant's decisions in this case  
16       were motivated by plain, old-fashioned greed.

17          The defendant does have the love and support of his  
18       girlfriend and those friends that have submitted letters on his  
19       behalf. I provided counsel with a second letter from  
20       Mr. Hattig, who recognized immediately that the evidence  
21       against the defendant was overwhelming, and apparently who, to  
22       no avail, tried to convince the defendant to plead guilty. I  
23       still don't quite understand why he has taken such an interest  
24       in the defendant or his case; however, his interest apparently  
25       is sincere, genuine and innocent and as a result of his

1 friendship. I do recall that at one or maybe more than one  
2 hearing, I had some rather harsh words about him, and although  
3 I may have suggested that he was involved in some wrongdoing, I  
4 can see now that my suspicions were totally unfounded. He is  
5 certainly correct in his letter that if the defendant had  
6 accepted responsibility and entered a plea of guilty, he would  
7 be facing a significantly lower sentence. However, to suggest  
8 that the defendant's attorneys had not properly advised him is,  
9 as I've indicated before, absurd.

10 The defendant's attorneys provided him with outstanding  
11 advice and representation. Unfortunately, when confronted with  
12 a client such as defendant, who refuses to accept  
13 responsibility and cannot be convinced that their expectations  
14 of acquittal are totally unrealistic, there is no alternative  
15 but to try the case. Of course, based upon the overwhelming  
16 evidence the government had against him, counsel's job was not  
17 only an uphill battle, but virtually impossible, because there  
18 was virtually no viable defense to these charges.

19 However, I do want to note that the defense motion  
20 practice in this case was excellent, and as I indicated before,  
21 with the result of the suppression of the gun and ultimately  
22 with the help of the Supreme Court, the Court dismissed the  
23 924(c) count, which of course would have added an additional  
24 five-year consecutive sentence. And now that the government  
25 has dismissed its appeal of the 924(c) count, the defendant is

1 no longer at risk of a consecutive five-year sentence.

2 As I indicated, the presentence report indicates that the  
3 defendant's worked in the gay pornography industry as an actor  
4 for several years, and when not acting, he worked as a  
5 residential painter. And although he has been employed, he has  
6 very little to show for it and has a negative net worth of  
7 approximately \$15,000.

8 I've also considered and taken into account the advisory  
9 guideline range, and the Court finds that the advisory  
10 guideline range adequately takes into consideration the  
11 specific facts and circumstances of this case and that the  
12 range established by the guidelines is sufficient to satisfy  
13 the purposes of sentencing.

14 The next factor that I have considered is unwarranted  
15 sentencing disparity, and I have considered this factor and  
16 conclude that to the extent any disparity exists, it's not  
17 unwarranted, and it's fully justified by the unique  
18 circumstances of this case, which include the presence of  
19 significant aggravating factors.

20 I've also taken into consideration and will enter an order  
21 of restitution in the amount of \$500,000.

22 In fashioning the sentence in this case, I've also  
23 considered the goals or purposes of sentencing, and I conclude  
24 that the Court's sentence is sufficient but not greater than  
25 necessary to meet the four purposes of sentencing. I've

1 already concluded that this is a very serious offense and  
2 requires a sentence that will promote respect for the law and  
3 provide just punishment.

4 As to deterrence, the Court concludes that given the facts  
5 of this case, both specific and general deterrence are  
6 appropriate to goals of a just sentence. Specific deterrence  
7 will discourage this defendant from committing such crimes  
8 again, and general deterrence will be satisfied because the  
9 sentence will send a clear message that this type of crime will  
10 not be tolerated by the law, and hopefully it will discourage  
11 others from committing such a crime.

12 A related and justifiable reason for punishment in this  
13 case is the legitimate concern that anything but a substantial  
14 prison sentence would be rightly regarded as deprecating the  
15 seriousness of this crime.

16 So for all of the foregoing reasons, the Court imposes the  
17 following sentence:

18 It is ordered that the defendant shall pay to the  
19 United States a special assessment of \$600, which is due  
20 immediately. Any unpaid balance shall be due during the period  
21 of imprisonment at the rate of not less than \$25 per quarter  
22 and pursuant to the Bureau of Prisons' Inmate Financial  
23 Responsibility Program.

24 It is ordered that the defendant shall pay restitution in  
25 the total amount of \$500,000 to the victim in this case

1 pursuant to 18 United States Code, Section 3663(a).

2 Restitution shall be due during the period of imprisonment  
3 at the rate of not less than \$25 per quarter and pursuant to  
4 the Bureau of Prisons' Inmate Financial Responsibility Program.  
5 If any amount of restitution remains unpaid after release from  
6 custody, nominal monthly payments of at least 10 percent of the  
7 defendant's gross monthly income, but not less than a hundred  
8 dollars, whichever is greater, shall be made during the period  
9 of supervised release and shall begin 30 days after the  
10 commencement of supervision. Nominal restitution payments are  
11 ordered, as the Court finds that the defendant's economic  
12 circumstances do not allow for either immediate or future  
13 payment of the amount ordered.

14 Pursuant to 18 United States Code, Section 3612(f)(3)(A),  
15 interest on the restitution ordered is waived, because the  
16 defendant does not have the ability to pay interest. Payments  
17 may be subject to penalties for default and delinquency  
18 pursuant to 18 United States Code, Section 3612(g).

19 The defendant shall comply with General Order 01-05.

20 All fines are waived, as it is found that the defendant  
21 does not have the ability to pay a fine in addition to  
22 restitution.

23 The Court has entered a money judgment of forfeiture  
24 against the defendant, which is incorporated by reference into  
25 this judgment and is final.

Pursuant to the Sentencing Reform Act of 1984, it's the judgment of the Court that the defendant is hereby committed on Counts 1 through 6 of the first superseding indictment to the custody of the Bureau of Prisons for a term of 70 months. This term consists of 70 months on each of Counts 2 and 5 of the first superseding indictment, 60 months on Count 6 of the first superseding indictment, 36 months on each of Counts 3 and 4 of the first superseding indictment, and 24 months on Count 1 of the first superseding indictment, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 2, 5, and 6 of the first superseding indictment, and one year on each of Counts 1, 3, and 4 of the first superseding indictment, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U.S. Probation Office, General Order 05-02 and General Order 01-05, including the three special conditions delineated in General Order 01-05.

2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.

1           3. The defendant shall cooperate in the collection of a  
2 DNA sample from the defendant.

3           4. The defendant shall not commit any violation of local,  
4 state, or federal law or ordinance.

5           5. The defendant shall comply with the immigration rules  
6 and regulations of the United States, and if deported from this  
7 country either voluntarily or involuntarily, not re-enter  
8 United States illegally. The defendant is not required to  
9 report to the probation officer while residing outside of the  
10 United States; however, within 72 hours of release from any  
11 custody or re-entry to the United States during the period of  
12 court-ordered supervision, the defendant shall report for  
13 instructions to the U.S. Probation Office located in this  
14 building.

15           6. The defendant shall refrain from any unlawful use of a  
16 controlled substance. The defendant shall submit to one drug  
17 test within 15 days of release from imprisonment, and at least  
18 two periodic drug tests thereafter, not to exceed eight tests  
19 per month, as directed by the probation officer.

20           7. The defendant shall participate in an outpatient  
21 substance abuse treatment and counseling program that includes  
22 urinalysis, breath and/or sweat patch testing, as directed by  
23 the probation officer. The defendant shall abstain from using  
24 alcohol and illicit drugs and from abusing prescription  
25 medications during the period of supervision.

1           8. During the course of supervision, the probation  
2 officer, with the agreement of defendant and his counsel, may  
3 place the defendant in a residential drug treatment program  
4 approved by the United States probation officer for the  
5 treatment of narcotic addiction or drug dependency, which may  
6 include counseling and testing to determine if the defendant  
7 has reverted to the use of drugs, and the defendant shall  
8 reside in the treatment program until discharged by the program  
9 director and the probation officer.

10           9. As directed by the probation officer, the defendant  
11 shall pay all or part of the cost of treating the defendant's  
12 drug dependency to the aftercare contractor during the period  
13 of community supervision pursuant to 18 United States Code,  
14 Section 3672. The defendant shall provide payment and proof of  
15 payment as directed by the probation officer.

16           10. The defendant shall apply all monies received from  
17 any income tax refunds to the outstanding court-ordered  
18 financial obligation. In addition, the defendant shall apply  
19 all money received from lottery winnings, inheritance,  
20 judgments, any other anticipated or unexpected financial gains  
21 to the outstanding court-ordered financial obligation.

22           The Court authorizes the probation officer to disclose the  
23 presentence report to the substance abuse treatment provider to  
24 facilitate the defendant's treatment for narcotic addiction or  
25 drug dependency. Further disclosure of the presentence report



1 by the treatment provider is prohibited without the consent of  
2 this Court.

3 I want to advise the defendant that if you wish to appeal  
4 your conviction and your sentence, you must file a notice of  
5 appeal within 14 days of today or you will lose your right to  
6 an appeal. If you're unable to afford an attorney for your  
7 appeal, one may be appointed at no cost to you.

8 I will make a recommendation that the defendant be  
9 permitted to participate in the Bureau of Prisons' RDAP  
10 program.

11 Do you want me to make a recommendation in terms of a  
12 location?

13 MS. AHMAD: Your Honor, Mr. Brank would like to remain  
14 within Southern California, if possible.

15 THE COURT: All right. I will make a recommendation  
16 to the Bureau of Prisons for a Southern California designation.

17 MS. AHMAD: Just one other issue, Your Honor.

18 On the restitution amount, I've conferred with government  
19 counsel from the forfeiture section, and my understanding is  
20 that once the judgment -- J & C is final, the funds that were  
21 seized from Mr. Brank will be a credit against the restitution,  
22 and so I believe government counsel and I are in agreement that  
23 the balance will be \$54,004.40.

24 THE COURT: Well, but I'm going to continue the amount  
25 of restitution in the judgment of conviction, and then he'll

1 get a credit for that.

2 All right. Anything else?

3 MS. JAIMEZ: Not from the government, Your Honor.

4 MS. AHMAD: Nothing further, Your Honor.

5 THE COURT: All right. Thank you very much.

6 Oh, the clerk has just advised me, or told me, or  
7 suggested to me that the government should have a motion with  
8 respect to the underlying indictment in this case.

9 MS. JAIMEZ: Could you clarify, Your Honor?

10 THE COURT: You're going to dismiss the underlying  
11 indictment?

12 MR. JAUREGUI: The what indictment?

13 MS. JAIMEZ: The underlying indictment?

14 THE COURT: He was sentenced on the first superseding  
15 indictment.

16 MR. JAUREGUI: Correct.

17 MS. JAIMEZ: Oh, yes.

18 THE COURT: So we have an underlying indictment.

19 MS. JAIMEZ: Yes, Your Honor. The government --

20 THE COURT: So is the government going to move to  
21 dismiss the underlying indictment?

22 MS. JAIMEZ: Yes, Your Honor.

23 THE COURT: All right. That motion will be granted.

24 MS. JAIMEZ: Thank you, Your Honor.

25 MS. AHMAD: Thank you, Your Honor.

1 THE COURT: All right. Thank you very much.

2 THE CLERK: All rise.

3 This court is adjourned.

4

5 *(Proceedings concluded at 10:14 a.m.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
correct transcript of the stenographically reported proceedings  
held in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the  
Judicial Conference of the United States.

Date: OCTOBER 28, 2015

/S/ SANDRA MACNEIL

Sandra MacNeil, CSR No. 9013